repugnant to all our notions of justice for Encik Zubir was jailed, (though for only one day), when he was not a defendant, neither was he charged with the offence in question and he had, unmistakably, represented the defendant/corporation in appearing in court and pleading guilty to the offence. Such a literal reading, therefore, could not be adopted as Parliament could not have intended such a totally unjust result or gross injustice.

Such a result aforesaid could not have been intended by Parliament, if one is to adopt a purposive approach in interpreting para. 20. This approach was explained by Lord Diplock in *Kammins Ballrooms Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.*[1] . The Subordinate Courts Act, 1948, must have been clearly intended to define the limits of jurisdiction and powers of various classes of Subordinate Courts. It is certainly not a statute of criminal law administration. I use the expression of "criminal law" to include statutory offences.

The powers set out in the Third Schedule can obviously be exercised only in the manner or in such manner as may be prescribed by a written law other than the Act itself. Thus, for example, para. 20 of the Third Schedule empowers the Subordinate Courts to enlarge time *etc.* for any proceedings. It would be equally wrong for any magistrate to invoke this paragraph on his own motion to extend such time regardless of the Limitation Act, 1953 which has been validly relied on. Para. 20 therefore shall be read as being subject to the modification, that the arrest or committal mentioned therein shall be according to any manner as may be prescribed by any written law other than the Subordinate Courts Act, 1948.

In the light of what is stated above, the learned Magistrate had therefore wholly misapplied the law or para. 20 of the said Third Schedule. The appeal must therefore be allowed and the sentence of one day's imprisonment set aside.

*Appeal allowed.*

Solicitors: *Skrine & Co.*

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## PUBLIC PROSECUTOR v. OON LAI HIN & ORS.

**[O. Cr. J. (Gunn Chit Tuan J.) July 10 & 24, 1984]**

**[Kuala Lumpur – Selangor Criminal Trial No. 17 of 1981]**

*Criminal Law and Procedure – Charge of trafficking in dangerous drug – Sentence – Life imprisonment imposed – Exceptional circumstances – Dangerous Drugs Act, 1952, s. 39b(2)*

*Dangerous Drugs – Charge of trafficking – Life imprisonment – Exceptional circumstances – Dangerous Drugs Act 1952, s. 39B(2)*

In this case the accused pleaded guilty to a charge of trafficking in dangerous drugs, *to wit* morphine. The accused was arrested on June 30, 1981 but the trial did not take place till July 10, 1984. The accused was sentenced to life imprisonment and 14 strokes of rotan. The Public Prosecutor appealed against sentence.

Held, while the amount of the drug involved was large, if the respondent had had the benefit of an early trial, say in 1981 or 1982, it was questionable whether public opinion would then have so hardened as to demand that a court should impose the ultimate penalty of death on him. Out of some sense of compassion, the court exercised its discretion and imposed the sentence of imprisonment for life and fourteen strokes of the rotan.

*Cases referred to:*

(1) *Public Prosecutor* v. *Tan Hock Hai* [1983] 1 M.L.J. 163.

(2) *Loh Hock Seng* v. *Public Prosecutor* [1980] 2 M.L.J. 13, 14.

CRIMINAL TRIAL.

*Azmi bin Ahmad* (Deputy Public Prosecutor) for the Public Prosecutor.

*W.P. Leong* for the first and third respondents.

*S. Augustin* for the second respondent.

*Cur. Adv. Vult.*

**Gunn Chit Tuan J.** : The Public Prosecutor has appealed against the sentence of life imprisonment and 14 strokes of the rotan imposed by me under the former section 39B(2) of the Dangerous Drugs Act, 1952, (the Act) on one Oon Lai Hin (the respondent) who was convicted on a charge of trafficking in a dangerous drug under section 39B(1)(a) of the Act..

Briefly the facts, as admitted by the respondent, showed that he was stopped by a party of customs officers in Klang on June 30, 1981, whilst he was driving a car No. PAA. 5431 with two

passengers in it. The customs officers identified themselves and thereafter examined the said car. They found a package with a number "999" marked on it on the floor board of the car under the driver's seat. They also found a yellow plastic bag in which there were a knife and a pair of spectacles. All the exhibits were seized by the customs officers and were later sent to the chemistry department for analysis. The chemist on analysis found that the said package contained morphine weighing 1,104 grammes and also confirmed that the knife contained traces of opium.

The respondent pleaded guilty and was convicted accordingly on his own plea. In mitigation Mr. Leong, the respondent's counsel, stated that the respondent, who was a broker and an estate agent earning about $800/- to $1,000/- per month, regretted what he had done. He has aged parents to support and was a first offender who was gainfully employed in Penang. He has since his arrest on June 30, 1981, been on remand. Counsel pointed out that the respondent was arrested and charged under section 39B(1) of the Act before sub-section (2) thereof was amended by Parliament with effect from April 15, 1983. He also stated that the respondent had come from Penang with another person who was not one of the two passengers who were charged together with him and that the said package belonged to the person who had left the car before his arrest. He was merely told by that person to look after the said package. The respondent also pleaded for leniency through his counsel and stated that he would never again break the law. He prayed that the court would exercise its discretion and not send him to the gallows but give him a chance.

Before I passed sentence on the respondent, I was not unmindful of the clear and vigorous observations of the Federal Court in its earlier decisions that the sentence of death should be imposed for trafficking in dangerous drugs other than in the most exceptional circumstances. I was also aware that the Federal Court in a judgment delivered by Chief Justice Raja Azlan Shah (as he then was) has pointed out in *Public Prosecutor* v. *Tan Hock Hai* [1] that the case of Beatrice Saubin, the 22 year old French girl who was convicted for trafficking in heroin and sentenced to death by the High Court which on appeal to the Federal Court was altered to life imprisonment should be considered as a case on its own particular facts and circumstances as no reasons, either oral or written, were given in that case to show what were the extenuating circumstances found in that case for the alteration of the death sentence imposed by the High Court. However, I gathered from the said case of *Public Prosecutor* v. *Tan Hock Hai* as well as from the other previous Federal Court decisions that a trial court could still consider whether there are exceptional circumstances in any particular case of such an offence occurring before April 15, 1983, to decide if it could according to the facts and circumstances of that particular case (see *Loh Hock Seng* v. *Public Prosecutor*)[2] exercise its discretion and impose the lesser penalty of life imprisonment as provided for by the former sub-section (2) of section 39B of the Act. In all previous cases when sentence of death has been substituted for life imprisonment by the Federal Court, it is to be noted that heroin was involved but in this case the drug concerned was morphine, although it must be admitted that morphine is also a dangerous drug which has been classified together with heroin in Part III of the First Schedule of the Act. Next I also noted that the respondent was arrested more than three years ago together with the two passengers who were acquitted and discharged after the prosecution withdrew the charges against them. The trial of the respondent and the other two persons was first fixed for hearing on October 4, 1982, but for some reason it was cancelled by the Senior Assistant Registrar of the High Court on September 29, 1982, and postponed to a date to be fixed. The case was again fixed for hearing on September 19, 1983. On September 5, 1983, the prosecution wrote to the Senior Assistant Registrar of the High Court to ask for another postponement on the grounds that Encik Ali Baba, the investigating officer of the case had to attend a "Seminar on Prevention of Narcotic Offences" in Japan from September 15, 1983, until October 22, 1983. Moreover another witness called Dr. Thant Zin was in Hongkong and the prosecution had still not yet traced his address for service of a subpoena on him. The request for postponement was turned down by the Senior Assistant Registrar in a letter dated September 7, 1983, but for some reasons the trial was not proceeded with on September 19, 1983. The case was again fixed for hearing on February 21, 1984, but Mr. Sidney Augustin, counsel for one of the other two accused, wrote to the Senior Assistant Registrar on December 7, 1983, requesting that the trial of the case be postponed to some time after March 1984 as he would be engaged in the Seremban and Johor Bahru High Courts. On June 12, 1984, the Senior Assistant Registrar again fixed the case for trial on July 9, 1984, but on June 25, 1984, the prosecution wrote once again to the Senior Assistant Registrar requesting yet another postponement on the grounds that an important witness involved in the arrest of the

respondent was attending a seminar in Japan for five weeks beginning June 21, 1984. That request for yet another postponement was refused by me and the Senior Assistant Registrar informed the prosecution accordingly on June 28, 1984. Finally on July 9, 1984, before commencement of the trial the learned deputy together with both defence counsel sought permission to see me in Chambers. I indicated to them that I was not prepared to postpone the trial and suggested that we proceed with those witnesses who were available and who have been subpoenaed to attend court for the fourth time and that the prosecution could apply for an adjournment later. The learned deputy then without any objections from both defence counsel enquired whether I would agree to commence the trial later so that he could go and consult one of his more senior colleagues in the Attorney-General's Chambers. I agreed to stand down the case for one day and informed the parties that we should commence the trial the next morning. The next morning after the charge was read to the respondent he pleaded guilty whilst the other two accused persons claimed trial. I therefore stood down the case against the other two whilst I proceeded to deal with the case against the respondent. Having considered all the facts and circumstances of this case and bearing in mind the guidance of the Federal Court in its earlier decisions I considered that there were some circumstances in this case which might be considered exceptional. Whilst I appreciated that the amount of drug involved was large, yet I wondered if the respondent had had the benefit of an earlier trial, say in 1981 or 1982 before the amendment of the Act in April 1983, whether public opinion would then have so hardened as to demand that a court should impose the ultimate penalty of death on him. I think that in any particular case there would be room for differences of opinion on what would or could be considered to be exceptional circumstances. And whilst I was aware that a sentence of life imprisonment now for a conviction under section 39B(1) of the Act would be considered to be against the trend towards reasonable conformity in imposing death sentences even in cases of such offences occurring before April 15, 1983, yet admittedly out of some sense of compassion, I decided in the particular circumstances of this case to exercise my discretion and to impose on the respondent the sentence of imprisonment for life plus fourteen strokes of the rotan.

*Sentenced accordingly.*

Solicitors: *W.P. Leong & Partners; Augustin — Negrin & Co.*

## PUBLIC PROSECUTOR v. JAMALUL KHAIR

**[R. Cr. J. (Gunn Chit Tuan J.) August 3 & 20, 1984]**

**[Kuala Lumpur — Federal Territory Criminal Revision No. 7 of 1984]**

*Criminal Law and Procedure — Summary trial — Plea of guilty — Conviction — Postponed for sentence — Whether Magistrate functus officio — Application to withdraw plea — Criminal Procedure Code, s. 173 (m)(2).*

In this case the accused was charged for two offences under sections 324 and 354 of the Penal Code respectively. He pleaded guilty. The facts of the case narrated by the prosecuting officer was also admitted by him. The learned President of the Sessions Court convicted him on the pleas of guilty but postponed sentence at the request of the accused. On the day fixed for sentence when the accused was asked whether he had any plea in mitigation, he informed the court that he wished to withdraw his pleas of guilty because they were not made voluntarily. The learned President allowed him to withdraw the pleas but subsequently referred the matter to the High Court for revision.

**Held**, the learned President was not *functus officio* in this case until she has passed a sentence or has otherwise finally adjudicated in the matter. There was therefore no need for an order of revision and the learned President should proceed with the case.

*Cases referred to:*

(1) *Wong Sing Yeow* v. *Public Prosecutor* [1968] 1 M.L.J. 230, 231.

(2) *S. (an Infant)* v. *Recorder of Manchester* [1970] 2 W.L.R. 21, 25.

CRIMINAL REVISION

*Goon Soon Seng* (Deputy Public Prosecutor) for the applicant.

*S. Augustin* for the respondent

*Cur. Adv. Vult.*

**Gunn Chit Tuan J.** : The record of this case was sent to me by one of the Presidents, Sessions Court, Kuala Lumpur, for the purpose of revision or directions. The accused was charged in the Sessions Court, Kuala Lumpur, for two offences under section 324 and section 354 of the Penal Code respectively. After the two charges were read and explained to him, he pleaded guilty to both charges. The facts of the case narrated by the prosecuting officer were also admitted by him. The learned president recorded his pleas, found him guilty on both charges and convicted him accordingly, but did not pass sentence on that day because the accused requested a postponement of sentence. On the day fixed for sentence, when the accused was asked whether he had any plea in mitigation of sentence, he informed the court that he wished to